Virgin Records America, Inc v. Thomas

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New Jammie Thomas Lawyers Vow to Put RIAA on Trial

By David Kravets May 20, 2009 | 6:33 pm | Categories: Copyrights and Patents, RIAA Litigation

A new team of lawyers representing accused music uploader Jammie Thomas said Wednesday they would defeat the Recording Industry Association of America on its own turf. Stay tuned for the upcoming do-over of the nation's only music file sharing case to go to a jury.

"We are going for a jury verdict of zero," said Kiwi Camara, one of three Texas lawyers who replaced Minnesota litigator Brian Toder on Wednesday. "We are going to convince a jury that the RIAA should not bring these cases."

Jammie Thomas testifies during her October, 2007 trial

Jammie Thomas, now a married mother of three in Brainerd, Minnesota, famously lost her first trial in 2007, resulting in a $222,000 judgment. But months after the four-day trial was over, U.S. District Judge Michael Davis declared a mistrial, saying he'd incorrectly instructed the jury that merely making copyrighted work available on a file sharing program constituted infringement, regardless of whether anybody downloaded the content.

Thomas' lawyer from that trial bowed out this week, citing unpaid legal fees — more than $130,000 worth. Now the three former Harvard University classmates (Camara, Joe Sibley and former Netscape engineer Tim Nyberg) are stepping up to the plate for free. All three were students of Harvard scholar Charles Nesson, the founder of the Berkman Center for Internet & Society at Harvard University. Nesson defended Daniel Ellsberg in the Pentagon Papers case and is currently defending a former Boston University student the RIAA has accused of file sharing.

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The attorneys have a tough road ahead of them. They just got the case, and the retrial is set to begin in three weeks on June 15 in Duluth, Minnesota. The lawyers indicated they don't plan to seek a delay. The young attorneys think the key to victory is to attack the RIAA's litigation strategy, which has spawned 30,000 lawsuits over five years, most of which have settled out of court for a few thousand dollars.

"We think the jury is going to reject this strategy," Camara said. "The RIAA strategy here is not to try any of these cases."

The retrial, Camara said in a telephone interview, "will be a little more exciting" than the first round. (We can't help but recall that Thomas' earlier attorney, Brian Toder, also predicted victory.)

Jurors in that first trial concluded in just five minutes of deliberation that Thomas was liable for purloining 24 music tracks on the Kazaa file sharing network. A few hours later, the jury decided on a $9,250 per-song penalty, though some jurors wanted to go as high as $150,000 a song, the maximum allowed under the Copyright Act. The jury didn't like that Thomas had turned over a hard drive to the RIAA that was not in use at the time the files were spotted on Kazaa.

The RIAA announced last year it was discontinuing its 5-year-old litigation campaign. But the organization continues suing or negotiating settlements with people spotted sharing music on or before August of last year.

Under its new campaign against file sharing, the RIAA is lobbying internet service providers to discontinue service to repeat copyright scofflaws.

Thomas' former lawyer wished her luck Wednesday.

"I hope we are remembered, not for withdrawing, but for the considerable time and expense we provided before we could no longer afford to stay in Jammie's fight," said Toder. "Her interests are now well served, and we wish her well."

See Also:

- No Settlement in RIAA v. Jammie Thomas
- Judge Declares Mistrial in RIAA-Jammie Thomas Trial
- Professors Siding With Jammie Thomas in RIAA Case
- RIAA Appeals Jammie Thomas Mistrial
- Jammie Thomas Needs a New Lawyer, More Generous Fans
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